

Testimony of Gregory L. Shangold, MD, FACEP
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Judiciary Committee
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The Connecticut College of Emergency Physicians Supports HB-6622, "AN ACT CONCERNING THE BURDEN OF PROOF IN MEDICAL MALPRACTICE CASES AND THE STANDARD OF CARE RELATED TO EMERGENCY MEDICAL CARE AND TREATMENT"

Good afternoon Senator Coleman, Representative Fox, and Committee members. Thank you for the opportunity to present my testimony on HB-6622. I am the immediate Past-President and current legislative chair of the Connecticut College of Emergency Physicians (CCEP), the organization that represents nearly 500 Board-Certified specialists who have devoted their careers to being on the front line of emergency medical care.

CCEP would like to thank the committee and its leadership for raising this bill and addressing Connecticut's underfunded and neglected emergency care system. People assume emergency care will always be available when needed. Emergency care includes care provided in the emergency department as well as immediately subsequent stabilizing care that may occur elsewhere in the hospital or after transfer to a higher level of care. In addition to emergency physicians, on-call specialists are often required to participate in the stabilization of emergent patients. Nationally, more than three-quarters of emergency department directors reported that their EDs have inadequate coverage for plastic surgery, hand surgery and neurosurgery. In Connecticut the rate was even higher. One of the main reasons for this situation is the current malpractice environment in the state of Connecticut.

The important message to understand is how the current medical liability situation in Connecticut translates to a decrease in access to care for patients. This happens in a variety of ways. Surveys show many physicians will or have retired early while others moved to states where significant reform has already occurred.

Arizona 2009
Utah 2009
South Carolina 2005
Georgia 2004
Florida 2003
Texas 2003

Other Connecticut physicians have stopped performing procedures that increase individual liability and others have stopped being affiliated with hospitals and chose to perform procedures at independent surgi-centers to avoid on-call requirements.

Public polls taken at the time of the national debate on healthcare showed 85% of people believe the current legal system is responsible for the rising cost of healthcare. THEY ARE RIGHT! The cost of defensive medicine is astronomical. Conservatively, the congressional budget office states malpractice reform will save \$54 billion over ten years. In its statement, the CBO acknowledged the estimate already considered the reform many states have already enacted. As a practicing emergency physician, I

know the cost of defensive medicine is significantly higher. Every physician I know orders expensive tests like CT scans when they know the results will be negative because of the fear of being sued. Furthermore, young physicians are being taught how to practice defensive medicine. The cost of defensive medicine is compounded by more than the simple test. Every test has complications which lead to additional cost. Also every test produces a certain amount of false positives which beget further testing and so on and so on. For example a patient may come to the emergency department with a cough and a fever. If there was no fear of litigation, that patient may be started on antibiotics and treated for pneumonia. However, it is likely a chest x-ray would be ordered. The radiologist may see a small nodule and recommend a CT scan of the chest. Even though there still is no sign of cancer, a follow up CT scan is recommended in a few months. One may argue that even identifying one cancer is worth all of this testing. However current research shows for every 1000 CT scans performed, the radiation will cause one case of fatal cancer.

Right now, Connecticut is heading in the wrong direction. In 2006, the average payout for the 114 claims was \$800,000 compared to the national average of \$325,000, thus ranking Connecticut number one in the country. This translates into premiums being twice the national average. The American College of Emergency Physicians ranked CT 35 out of 50 for the malpractice environment. Doctors are leaving Connecticut and going to states where they feel more protected. Texas has a 9 month wait list to obtain a physicians license because of the backlog. This has lead to a 24% increase in charity care. Seventy-six counties reported a gain in emergency physicians; 39 were previously underserved.

According to a Harvard study, 40% of malpractice lawsuits are frivolous. The rate is likely higher when considering only emergency stabilization cases. Federal law requires hospitals to treat any patient who presents to an emergency department. Emergency physicians make life and death decisions often without the access to critical medical information and the ability to form a trusted doctor / patient relationship. Many states have enacted this type of legislation with the goal of improving access to care for all emergency patients. I would offer a friendly amendment to change the language in section three to mimic the Georgia language which more accurately reflects where hospitals can provide stabilizing care to emergency patients and not list only emergency departments.

(c) In an action involving a health care liability claim arising out of the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, no physician or health care provider shall be held liable unless it is proven by clear and convincing evidence that the physician or health care provider's actions showed gross negligence.

For those who challenge the constitutionality of this law, I would refer them to the Georgia Supreme Court 3/15/2010 in *Gliemmo v Cousineau* which upheld the constitutionality of the law.

I would like to thank you on behalf of the emergency physicians, all physicians who take emergency call, and the 1.5 million emergency department patients each year. Passing this legislation would be a momentous first step to assure access to emergency care for patients and would offer some stabilization for Connecticut's fragmented emergency services.

Attachments:

1. Position Paper on Malpractice Reform for the State of Connecticut

Protecting Access to Emergency Care

Special Liability Reform for Emergency Care Providers

*Connecticut College of Emergency Physicians - Connecticut State Medical Society - Connecticut Hospital Association –
Connecticut Academy of Physician Assistants- Connecticut Chapter of the American College of Surgeons –
Connecticut Orthopaedic Society – American College of Obstetricians and Gynecologists – Connecticut Chapter*

Support HB 6622

An Act Concerning the Burden of Proof in Medical Malpractice Cases and the Standard of Care Related to Emergency Medical Care and Treatment

Background

Emergency Departments are the backbone of Connecticut's healthcare safety net and its emergency care system. Our Emergency Departments care for anyone seeking medical services, from the most severe trauma, to seasonal flu, to a simple laceration. However, this safety net is at the breaking point.

Connecticut's emergency care system is at this critical juncture because there is a severe shortage of on-call physicians willing to treat emergency patients requiring specialty consultation such as orthopedics, plastic, hand, and neurosurgeons. Connecticut no longer has a safety net to safeguard all patients. Continuing to ignore and dismiss this problem will cause further erosion into the emergency care system and compromise quality and safety to deplorable levels.

Federal EMTALA Mandate

A federal law, known as EMTALA, mandates that hospitals ensure that there are enough emergency physicians and on-call specialists to fully evaluate any patient who presents to an emergency department. The federal mandate requires that hospitals provide for the availability of any and all tests to determine the existence of an emergency medical condition, stabilization of any emergency medical condition that is found, and on-call specialists if necessary to help stabilize the patient; this is all done without consideration of the patient's ability to pay. Because the hospital, the emergency physician and the on-call specialist do not have a choice in providing this mandatory evaluation and/or treatment, there needs to be some relief from malpractice claims that might arise from this obligation.

Reform Will Improve Access to Emergency Care

Emergency physicians make life and death decisions, often without access to critical medical information and the ability to form an adequate doctor/patient relationship. At this time of healthcare reform, policy makers need to develop measures that support emergency medicine as a critical component of health care. Any reform must improve access to emergency care and the quality of emergency medical care. One key component is medical malpractice reform.

The Health Care and Education Reconciliation Act of 2010 provides grants for states to enact legislation that will modify the current malpractice environment. In the American College Emergency Physicians' 2009 State of Emergency Care Report, Connecticut ranked 35th in the nation for our medical malpractice environment. Many other states have already enacted professional liability reform in order to strengthen the emergency care safety net for their constituents.

The time is now for our state to support access to emergency care and help control cost by enacting significant and meaningful medical malpractice reform.

The Solution

A coalition of health care providers strongly believe Connecticut must take advantage of the available federal grants and pass meaningful malpractice reform to ensure that patient continue to have access to emergency physicians and on-call specialist. HB 6622 simply raises the burden of proof for emergency physician and specialist that are willing to take call under federal EMTALA. This added protection will guarantee patient access to quality medical care. We look forward to the future where Connecticut's emergency department patients can expect timely and consistent emergency care. Stabilizing the safety net can only happen with significant and consequential reform.